

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 * * *

9 BERNINI DRIVE TRUST,

Case No. 2:12-cv-02134-APG-PAL

10 Plaintiff,

**ORDER REMANDING CASE TO THE
LAS VEGAS JUSTICE COURT**

11 v.

12 ZULFIYA S. KARIMOVA,

13 Defendant.

14
15 On December 14, 2012, defendant Zulfiya S. Karimova (“Karimova”) filed a Notice of
16 Removal. (Dkt. No. 1.) Plaintiff Bernini Drive Trust (“Bernini”) filed the underlying ejectment
17 action in the Las Vegas Justice Court on October 31, 2012. (*Id.* at 9–10.) On January 24, 2013,
18 this court ordered Karimova to show cause as to why this case should not be remanded for lack of
19 subject matter jurisdiction because the parties appeared to be Nevada citizens and the face of the
20 Complaint does not raise a federal question. (Dkt. No. 8.)

21 On February 7, 2013, Karimova responded. (Dkt. No. 9.) She argues that this case
22 implicates issues of federal law because, in a related case currently before this court, she is suing
23 Bernini (and various others) for violations of the federal Fair Debt Collection Practices Act
24 (“FDCPA”). *Karimova v. Alessi & Koenig et al.*, No. 2:13-cv-00151-JCM-CWH. She seems to
25 contend that federal question jurisdiction is proper in this case because Bernini’s alleged
26 violations of the FDCPA are a defense to eviction.

27 Although Bernini has not moved to remand, the court has an independent duty to examine
28 its own jurisdiction. *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). Two grounds

1 exist for subject matter jurisdiction in federal court: diversity jurisdiction under 28 U.S.C. § 1332
 2 and federal question jurisdiction under 28 U.S.C. § 1331. *Arbaugh v. Y&H Corp.*, 546 U.S. 500,
 3 501 (2006). Diversity jurisdiction requires that all plaintiffs be “citizens of different states” from
 4 all defendants (i.e., “complete diversity”) and that the amount in controversy be at least \$75,000.
 5 28 U.S.C. § 1332(a), (b). For the purposes of diversity jurisdiction, “[a] trust has the citizenship
 6 of its trustee or trustees.” *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899
 7 (9th Cir. 2006).

8 The federal question statute provides that “the district courts shall have original
 9 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United
 10 States.” *Id.* § 1331. Federal question jurisdiction is governed by the “‘well-pleaded complaint
 11 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
 12 the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S.
 13 386, 392 (1987).

14 Whether the basis for removal is diversity jurisdiction or federal question jurisdiction, the
 15 proponent of federal jurisdiction has the burden to prove, by a preponderance of the evidence, that
 16 removal is proper. *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d
 17 1102, 1106–07 (9th Cir. 2010). “Removal jurisdiction . . . must be rejected if there is any doubt
 18 as to the right of removal” *Id.* at 1107 (internal quotation marks and citation omitted).

19 Karimova’s filings do not indicate Bernini’s state(s) of citizenship nor the amount in
 20 controversy. Karimova’s allegation that Bernini’s citizenship is unknown, (Dkt. No. 1 at 3), is
 21 insufficient to establish diversity of citizenship. *See Casparian v. Allstate Ins. Co.*, 689 F. Supp.
 22 1009, 1010 (N.D. Cal. 1988) (“The presence of unknown and unidentified parties may defeat
 23 diversity, as there is always the possibility that an unknown defendant is from the same state as
 24 the plaintiff”). Karimova also alleges that Iyad Haddad (“Haddad”) is the trustee of Bernini
 25 but does not state Haddad’s state of citizenship. (See Dkt. No. 9 at 2.) Even if Haddad were not a
 26 citizen of Nevada, however, diversity jurisdiction is not proper because Karimova has failed to
 27 prove that the amount in controversy is at least \$75,000.

28

As to federal question jurisdiction, the Complaint pleads only a state law cause of action for ejectment. Karimova's apparent reliance on issues of federal law as defenses to ejectment do not comport with the "well-pleaded complaint rule," and thus there is no basis for federal question jurisdiction.

Accordingly, the court hereby ORDERS this case REMANDED to the Las Vegas Justice Court.

DATED this 11th day of JULY, 2013.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE